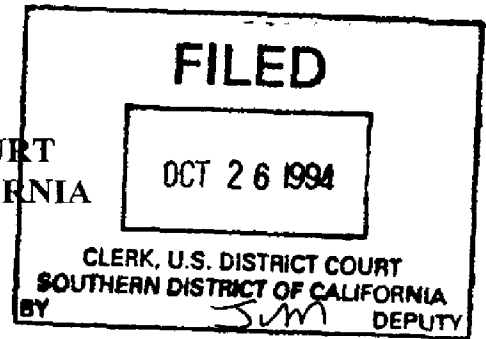


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA



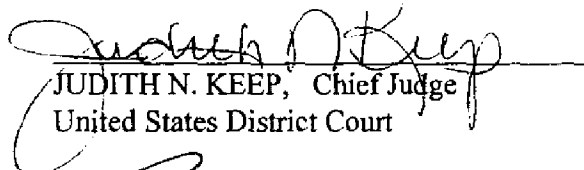
GRIEVANCE AND ADVERSE )  
ACTION PROCEDURES )  
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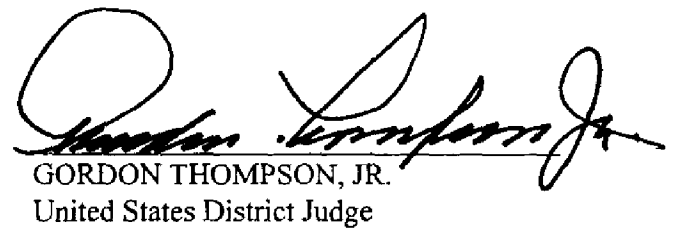
General Order No. 380-A

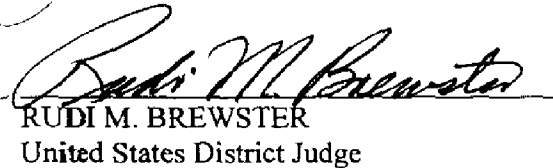
IT IS ORDERED that the attached Grievance and Corrective, Disciplinary and Adverse Action Procedures for the Clerk, Probation, and Pretrial services Offices are hereby approved by this Court. The procedures will become effective 30 days after the order is signed.

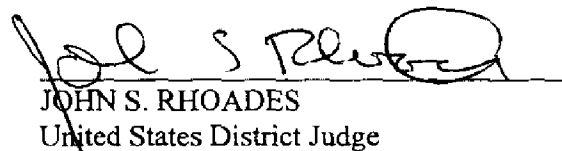
IT IS FURTHER ORDERED that copies of all grievance complaints and the final decision thereon be forwarded to the Chief Judge.

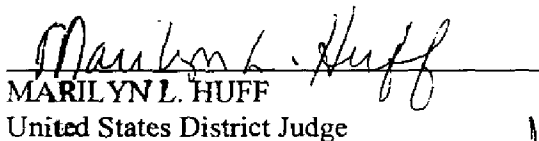
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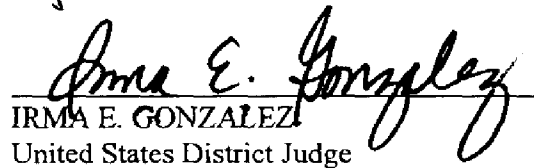
  
JUDITH N. KEEP, Chief Judge  
United States District Court

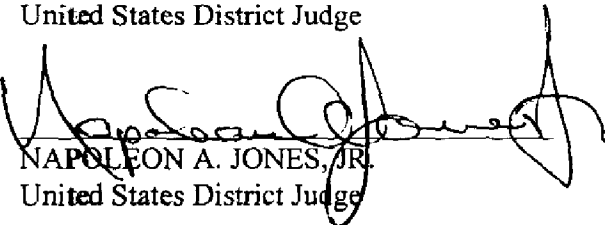
  
GORDON THOMPSON, JR.  
United States District Judge

  
RUDI M. BREWSTER  
United States District Judge

  
JOHN S. RHOADES  
United States District Judge

  
MARILYN L. HUFF  
United States District Judge

  
IRMA E. GONZALEZ  
United States District Judge

  
NAPOLÉON A. JONES, JR.  
United States District Judge

**I. GRIEVANCE PROCEDURES AND CORRECTIVE, DISCIPLINARY  
AND ADVERSE ACTION PROCEDURES**

**A. DEFINITIONS**

**1. Documentation**

This refers to the physical record which supports and justifies the need for the adverse personnel action. It may take the form of letters or memoranda of warning or reprimand, notes from personal observations and face-to-face conversations, telephone conversations, leave records, examples of poor quality work, or records of efforts made to correct the situation. Documentation is critically important anytime an adverse action is being taken, especially when an employee has a current acceptable performance rating.

**2. Business Day**

A business day is defined as a Monday, Tuesday, Wednesday, Thursday, or Friday, except for legal public holidays.

**3. Unit Executive**

The Unit Executive is the Clerk, Chief Probation Officer, or Chief Pretrial Services Officer.

**4. Reviewing Officer**

The Unit Executive is the reviewing officer in all adverse actions, *except certain terminations of appointment*, in which case the Chief Judge or his or her designee, e.g. another judicial officer, is the reviewing officer.

**B. GRIEVANCE PROCEDURES**

Grievances are employee complaints involving the interpretation or application of rules governing working conditions or practices where the employee believes he or she has received unfair treatment. The grievance may be in the form of an oral or written request by an employee for personal relief in a matter of personal concern or dissatisfaction related to employment which is subject to the control of the Unit Executive's management staff.

The purpose of the grievance procedure is to expeditiously correct the cause(s) of the grievance(s), to prevent similar complaints, to assure fair and equitable treatment of all employees, and to promote harmonious work relationships between management and employees and between employees at all levels.

All employees, both permanent and temporary, have a right to initiate a grievance. Unit Executives, supervisors, and employees are prohibited from denying an employee the opportunity to present a grievance or from subjecting an employee who has filed or is about to file a grievance to threats, duress, harassment, or an overt or covert act of reprisal.

Employees initiating a grievance are required to specify what personal relief is being sought. The specific remedy desired may not include a request for disciplinary or other action affecting another employee.

Grievances *include*, but are not limited to, such matters as:

- employee-supervisor relationships;
- duty assignments not affecting job classification;
- working facilities and conditions;
- policies and procedures which affect the conditions of employment.

*Excluded* from the grievance process are such nongrievable matters as :

- termination during a temporary appointment;
- termination during a probationary period;
- content of published court policies or regulations (the application or impact affecting the employee may be grievable);
- EEO complaints (see the Court's EEO Plan);
- harassment complaints (see Harassment Complaint Procedures in EEO Plan)
- position classification decisions(if EEO related, see EEO Plan);
- health benefits decisions;
- warnings, where no action has been taken;
- failure to receive a promotion (if EEO related, see EEO Plan);
- failure to receive a QSI;
- non-selection from a group of properly ranked and certified candidates (if EEO related, see EEO Plan);
- substance of performance elements established to assist in rating employees' job performance (the application of those elements may be grieved);
- failure to grant an award;
- return of an employee from a supervisory position to a nonsupervisory position due to poor performance within the first year;
- actions adversely affecting salary or continued employment arising from unacceptable performance or conduct (see adverse action procedures).

Unless otherwise indicated, there is no formal recourse to the above items.

## **1. Informal Grievance Procedures**

Most problems or complaints can be settled if the employee will promptly, informally and amicably discuss them with his or her supervisor. Employees and supervisors are encouraged to make every reasonable effort to find an acceptable solution to a grievance by informal means, at the lowest possible level of supervision. An employee who has a problem or complaint should first try to resolve it through discussion with his or her immediate supervisor. If after this discussion the employee believes the problem has not been resolved, he or she may discuss the problem with the next higher authority.

## **2. Formal Grievance Procedures**

If an employee is not satisfied with the decision rendered in the informal grievance procedure, he or she may present the grievance in writing, *within five business days*, to his or her immediate supervisor. The employee must also provide a copy of the written grievance to the Unit Executive. It is also the obligation of the grieving employee to:

- comply with the pertinent time limits;
- furnish sufficient details to clearly identify the matter being grieved; and
- specify the personal relief requested.

The supervisor will then schedule a meeting as soon as practicable to discuss the grievance with the employee, the employee's representative(s), and any other appropriate persons. The employee may select a representative to assist him or her in the preparation of a written grievance and to represent him or her. Management must be informed of the designation of any employee representative at least one day prior to the scheduled grievance meeting. The supervisor may, at his or her discretion:

- Interview and discuss the problem with the employee and/or the employee's representatives;
- Review the records pertinent to the grievance;
- Confer with any person or persons about the grievance.

The supervisor or manager shall render a decision in writing to the employee *within ten business days after hearing and discussing the formal grievance*. Subsequent to receipt of the written decision by the supervisor, if the employee does not file an appeal within five business days the grievance will be considered resolved.

If the parties are dissatisfied with the recommended solution, the matter will be referred to the Unit Executive or Unit Executive's designee. The Unit Executive or Unit Executive's designee will investigate as deemed necessary and render a decision within 10 full business days. The Unit Executive may extend the time limits for good cause. He or she may take any action he

or she deems appropriate under the circumstances. The Unit Executive is never obligated to appoint a designee to be the reviewing officer, but may appoint someone at his or her discretion. The Unit Executive or Unit Executive's designee shall inform the employee and the supervisor or manager, in writing, of his or her decision. The decision(s) of the Unit Executive or Unit Executive's designee shall be final in grievances covered by this policy, and is(are) not appealable.

No grievances may be filed against the Unit Executive.

A sample of the formal grievance form can be found in *Appendix II*.

## **C. CORRECTIVE, DISCIPLINARY, AND ADVERSE ACTION PROCEDURES**

This section of the manual is intended to provide the basis for fair and equitable procedures for correcting deficiencies in employee performance and/or conduct.

### **1. Deficiencies Warranting Corrective Actions**

Every effort should be made to correct minor performance and conduct deficiencies in an informal and genial manner as soon as possible when those deficiencies become apparent. Most performance and conduct deficiencies can be quickly corrected when an employee has a clear understanding of management's expectations. This includes a discussion by management with the employee on the precise tasks to be accomplished, due dates, expected performance levels and, if necessary, additional counseling to resolve the problem.

The following list constitutes areas where imposed corrective, disciplinary, or adverse actions would be valid. This list does not exhaust all possible grounds for disciplinary action, nor does it imply that the Court is obligated to take formal disciplinary action if an employee commits any of these offenses. It merely illustrates the kinds of offenses for which action may be taken.

- Abandonment of position;
- Absence from duty without leave;
- Below-standard work performance;
- Abuse of leave privileges;
- Discourteous treatment of other employees or the public;
- Possession or use of intoxicating beverages or controlled substances, or being under the influence of such substances while on duty;
- Insubordination;
- Neglect of duty;
- Improper political activity or violation of the Hatch Act;
- Infringement of personal affairs on office business;
- Unauthorized outside employment;
- Intentional violation of established office rules and procedures;
- Violation of any federal, state, or local law;
- Willful deceit;
- Fraud in securing appointment or promotion;
- Misuse of federal property, funds, or records;
- Excessive tardiness;
- Sexual, religious, racial, ethnic, and/or personal harassment;
- Misconduct;
- Actual or potential harm to the court and/or the court's components;
- Other acts which are incompatible with or reflect discredit upon the office.

## **1. Disciplinary Actions**

Progressive disciplinary actions may take the form of:

- oral warning;
- written notice to the employee of unacceptable performance or conduct;
- letter of reprimand for unacceptable conduct;
- placement of Work Improvement Program and/or Probationary Status;
- suspension from duty, placing the employee in a non-pay status.

The above disciplinary actions may be warranted when an employee's poor performance or misconduct jeopardizes his or her continued employment. Depending on the severity of the incident, disciplinary actions do not have to be progressive. Such matters should be handled in a formal manner by providing the employee with an official letter of warning or reprimand that states:

- date of incident;
- nature of the misconduct or poor performance;
- any prior incidents which were handled informally;
- corrective action to be taken;
- level of performance or conduct expected;
- formalized training and performance review period to be established for the employee; and
- the next anticipated action to be taken should the poor performance continue.

A copy of all written reprimands and warnings will be forwarded to the Personnel Specialist for inclusion in the employee's confidential personnel file as documentation in the event that continued problems warrant further adverse action proceedings.

## **3. Adverse Actions**

An adverse action is any personnel action initiated by management which negatively affects a permanent employee's pay or job classification. Such action includes but is not limited to:

- an "unacceptable" performance rating which results in the employee being denied a within-grade increase;
- demotion;
- involuntary reassignment to a lesser job classification;
- suspension with or without pay;
- removal or involuntary termination (other than the abolition of a position).

Adverse action procedures do not apply to temporary employees whose term of service is less than one year or to those employees still in the probationary period following the entrance-on-duty date.

The procedure to follow on adverse actions is outlined below:

**(a) Notice of Proposed Action**

The Unit Executive will prepare the notice of proposed adverse action in the form of a letter or memorandum to the employee. This notice will:

- advise the employee of the nature of the proposed adverse action and the proposed effective date;
- cite all pertinent information which justified the adverse action;
- summarize the efforts that were made to correct the situation;
- advise the employee of his or her right to make a written request for an administrative hearing to the Unit Executive, or in termination cases, the chief judge or the chief judge's designee, within *five business days*; and
- advise the employee of his or her right to be represented at the hearing.

The employee also has the option of replying to the Unit Executive, verbally or in writing, concerning the contents of the notice. This does not preclude any hearing request.

**(b) Request for Administrative Hearing**

If an employee desires an administrative hearing on the proposed adverse action, he or she must submit a letter or memorandum to the Unit Executive asking for the hearing, unless the proposed adverse action is termination, in which case the request for an administrative hearing is submitted to the Chief Judge, if the Chief Judge is the final authority for termination. The request must be made within *five business days* of the employee's receipt of the notice of proposed adverse action.

**(c) Notice of Administrative Hearing**

Within *five business days* of receipt of the request for hearing, the Unit Executive, or in termination cases where the Chief Judge is the final authority, the Chief Judge or her designee, must advise each party in the action in writing of the date and time the administrative hearing will be held. The hearing should be scheduled within a reasonable amount of time from receipt of the request for hearing, not to exceed ten business days, or as soon thereafter as is practicable.



(d) **Hearing**

The hearing is an administrative procedure in which the circumstances surrounding the adverse action are reviewed. **The hearing is a forum for presenting mitigating factors and a means of ensuring that the final decision is not based on any factual inaccuracies. The hearing is not intended to be an adversarial proceeding or a formal trial.** Formal rules of evidence and procedure do not apply and management does not bear the burden of proof.

The Unit Executive, or in cases of termination where the Chief Judge is the final authority, the Chief Judge or her designee, will preside and decide the manner in which the hearing will be conducted, whether witnesses may be presented, the necessity of making a record, and the time, location, and duration of the proceeding. At the conclusion of the hearing, a decision will be made as to whether the proposed adverse action will be sustained or modified. The decision is final and not subject to appeal.

(e) **Notice of Decision**

*Within five business days of the conclusion of the hearing, or as soon thereafter as is practicable, all interested parties will be advised of the Reviewing Officer's decision, followed by written findings and conclusion of facts. They will be provided with a statement of the reason for the decision and will be advised that the decision of the Unit Executive, or in cases of termination where the Chief Judge is the final authority, the decision of the Chief Judge or her designee, is final and no further administrative remedy is available.*

If it is found that the proposed adverse action is without merit, the notice will also advise all parties that any documents generated as a result of the proposed adverse action are to be removed from the employee's confidential personnel file.

If, however, the decision is to sustain or modify the proposed adverse action, the Unit Executive may proceed to issue notice of adverse action and all documents remain part of the employee's confidential personnel file.

(f) **Notice of Adverse Action Without Prior Issuance of a Notice of a Proposed Adverse Action**

If a notice of adverse action is issued without a notice of the proposed action having previously been issued, the notice of adverse action must contain all of the elements of a notice of proposed action. In addition, it must advise the employee that if the action is vacated as a result of the hearing before the Unit Executive, or in certain cases of termination, before the Chief Judge or her designee, the employee will be returned

to his or her prior status as if no action had been taken, and all related documents will be removed from the employee's confidential personnel file.

**(g)     Exceptions**

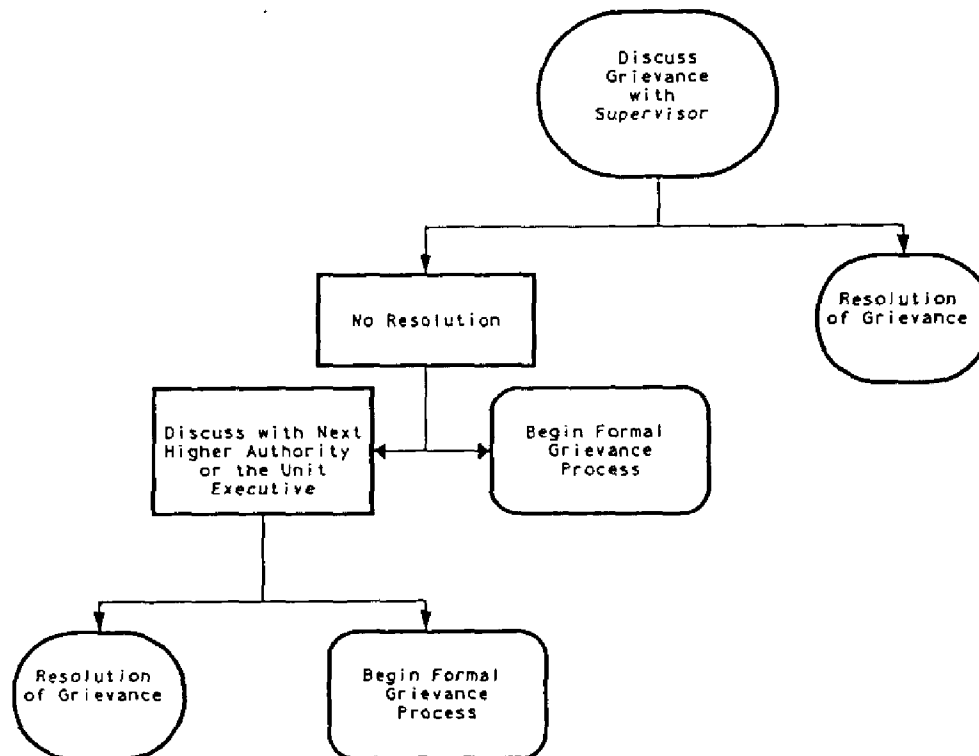
In extraordinary circumstances, the Unit Executive may determine that the employee's continued presence in the office during the adverse action process poses a threat to the employee, to fellow workers, to the office, to the Court, or to the public. The Unit Executive may determine that the employee's presence could result in loss of or damage to government property, records, or documents of cases before the court, or adversely affect the operation of the court, or otherwise jeopardize government interests. The Unit Executive may then initiate one of the following actions:

1.     In extreme cases where immediate removal of an employee is deemed necessary, the employee can be placed in a non-duty status with pay for a maximum of five business days, during which the notice of proposed action must be prepared.
2.     Assign the employee to alternate duties.
3.     Place the employee on annual leave (with the employee's consent), administrative leave, or suspension without pay pending resolution of the proposed adverse action.
4.     Place the employee on involuntary sick leave, if the Unit Executive has medical documentation demonstrating physical or mental incapacitation.

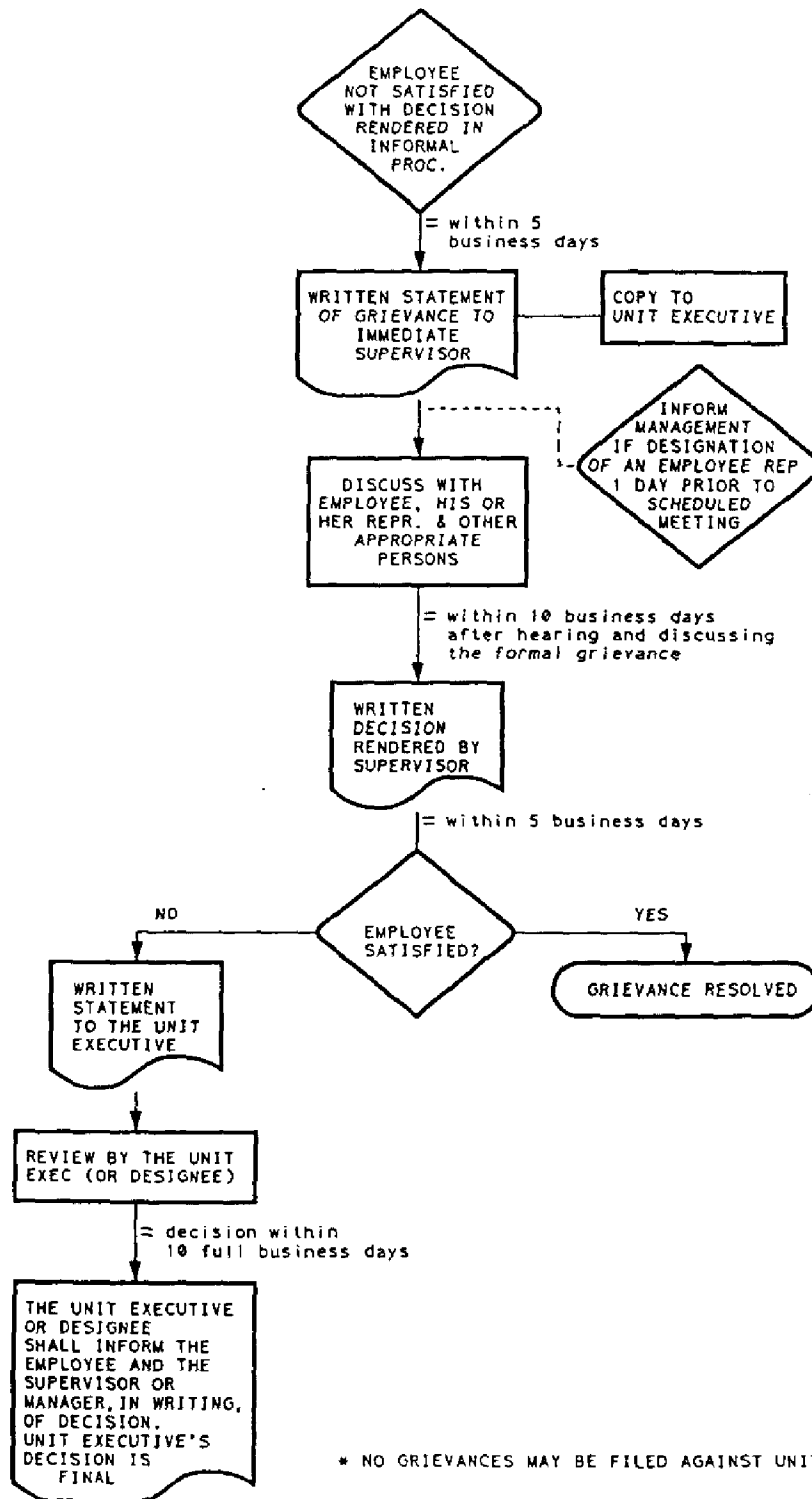
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**APPENDIX I**  
**GRIEVANCE PROCESS FLOW CHARTS**

## INFORMAL GRIEVANCE PROCESS



## FORMAL GRIEVANCE PROCESS



**APPENDIX II**  
**GRIEVANCE FORM**

**United States District Court, Southern District of California**

**FORMAL GRIEVANCE FORM**

From: \_\_\_\_\_  
Name of Employee

To: \_\_\_\_\_  
Name of Employee's immediate supervisor

Nature of Grievance: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Settlement Desired: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Employee

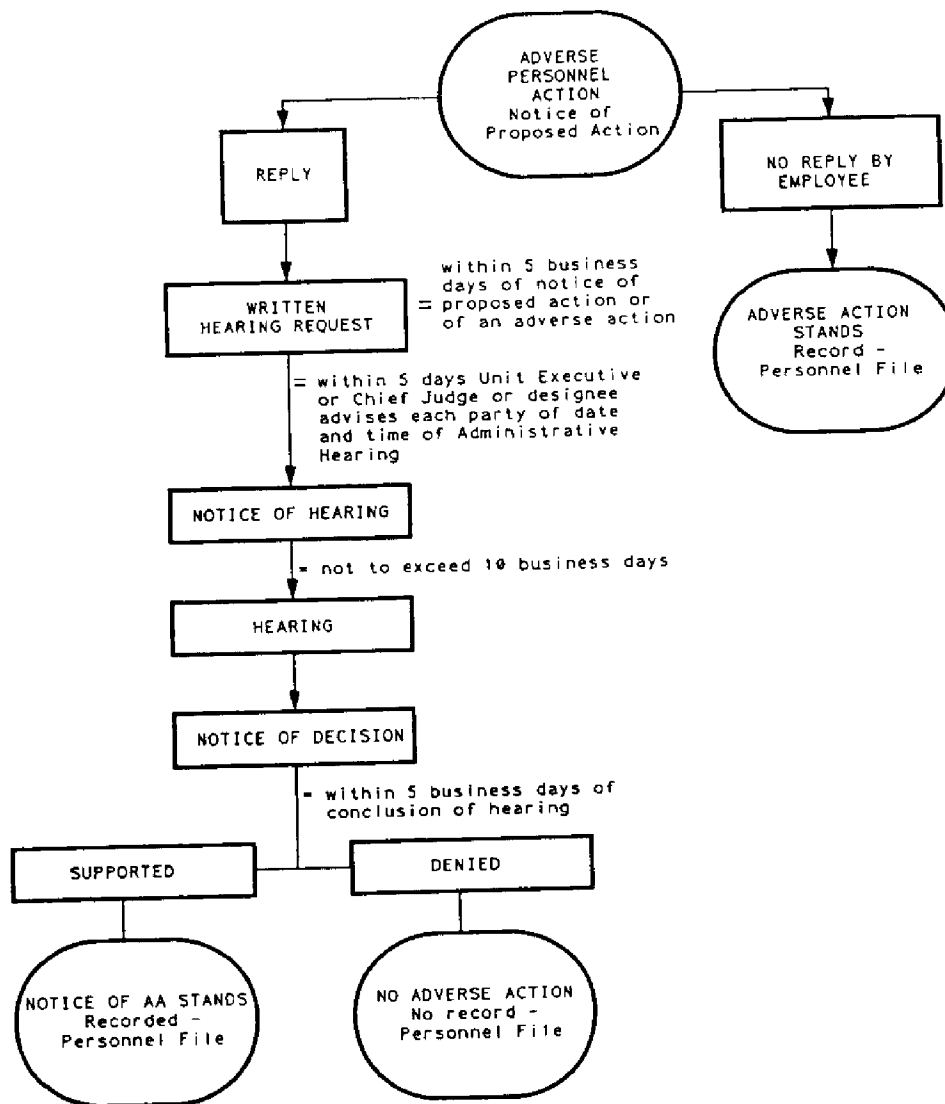
\_\_\_\_\_  
Date

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**APPENDIX III**  
**ADVERSE ACTION FLOW CHART**



## ADVERSE PERSONNEL ACTION FLOW CHART



\* Decisions of the Unit Executive are final and not appealable.